IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.969 of 2007

Babu ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Govt.,
   Prohibition & Excise Department,
   Chennai-600 009.

2. District Magistrate and District Collector,
   Kancheepuram District,
   Kancheepuram. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus call for the records relating to the detenue's detention order passed by the 2nd respondent in his order No.03/2007 dated 30.1.2007 approved by the 1st respondent and set aside the same and produce the detenue Babu now detained in central prison-II,puzhal,Chennai as stated therein.

For Petitioner : Mr.N.Ramu

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER
(Order of this Court was made by P.D.DINAKARAN,J.)

The impugned order of detention dated 30.01.2007, passed by the second respondent, branding the petitioner herein as Goonda and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is challenged in this writ petition by the detenu himself.

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2. According to the detaining authority, viz., the second respondent, the ground case occurrence is said to have taken place on 07.01.2007 at 10.00 hours. The complainant by name Somasundaram is a fruit vendor doing business in front of Rajaji Market at Adisanpettai. The accused detenu came to his place of business and, by threatening and uttering filthy words, demanded money from the complainant. When the complainant refused, he took a knife and tried to assault him. The complainant prevented the attack and in that transaction, he sustained simple injury, however, the accused could take away Rs.300/- from the complainant's pocket. Hearing the hue and cry raised by the complainant, neighbours gathered at that place, and the accused, by showing knife and stopping the vehicles passing thereby ran away through Mettu Street. Due to the vandal activities of the detenu, the general public ran to safer places and the normalcy of the area came to a standstill. On receipt of complaint from the complainant, the Sub Inspector of Police registered a case in Vinshnu Kanchi Police Station Cr. No.7/2007 under Section 294(b), 506(ii), 307 and 394 IPC. The Detaining Authority, taking note of six adverse cases to the credit of the detenu and considering his activities prejudicial to the maintenance of public order, clamped the detention order on him.

3. The core contention of the learned counsel for the petitioner/detenu assailing the order of detention is that while the adverse cases referred to in the grounds of detention relate to offences punishable under Sections 457, 461 and 380 (theft cases, which do not attract law and order problem), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

4. We have heard learned Additional Public Prosecutor on the above said point.

5. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu in the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982, as per which, the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of these activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

6. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

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"... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offences of theft and do not relate to law and order problem and the ground case alone relates to the offences punishable under Sections 294 (b), 506(ii), 307 and 394 IPC. and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Hence, applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention dated 30.01.2007. Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

JI.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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1. The Secretary to Govt.,
   Prohibition & Excise Department,
   Chennai 600 009.

2. District Magistrate and District Collector,
   Kancheepuram District,
   Kancheepuram.

3. The Superintendent of Central Prison-II,
   Puzhal, Chennai.

4. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort Saint George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

+1 cc to Mr.N.Ramu, Advocate Sr.No.64236.

VSV(CO)
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